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NOTES OF THE WEEK

Adoption Opposed by Putative Father

The putative father is one of the persons whose consent may be required to the making of an adoption order unless it can be dispensed with on one of the statutory grounds. His consent is usually forthcoming, since the making of an adoption order generally relieves him of future liability under an affiliation order or an agreement.

The case of *In Re D, An Infant* (*The Times*, January 28) presented unusual circumstances. A county court Judge had refused to make an adoption order where the putative father of the infant refused to give consent. The applicants had had the child in their care for over a year. The putative father had been convicted of murdering the mother who had married another man, and he was serving a prison sentence. An affiliation order had been made against him, and the learned county court Judge held that he was a person whose consent was required and that his consent was not unreasonably withheld. The applicants appealed to the Court of Appeal, and the appeal was allowed.

In delivering judgment, the Master of the Rolls said that the natural father opposed the application on two grounds. He said his sister, who was unmarried, would come home from India, get work here and have someone to look after the child while she was at work. She would in fact act as foster-mother. He had also told the Judge the boy was his son and he loved him. That was his sole reason for opposing the adoption. Lord Evershed pointed out that it was quite certain that the father was, and in the foreseeable future was likely to remain, in a position in which he would be quite unable to exercise any parental obligations towards the child or in which any ties of affection could conceivably flourish. The question had been raised whether at the relevant date the father remained liable under the affiliation order, and if he was not his consent would not be necessary. However, said Lord Evershed, it was sufficient to say that here, if the father was within the section, on the facts of the case his consent was unreasonably withheld, within the terms of s. 3 (1) (*c*). A putative father was not a parent within the meaning of s. 2.

Welfare of the Infant

The Master of the Rolls went on to say that since the Court here was not concerned with any parental rights which would be taken away by the adoption order, the primary test of the right order to make was that of the welfare of the infant, and the welfare of the child seemed almost overwhelmingly to point to an order being made now. If the child was brought up by a relative of the father he would inevitably find out that he was illegitimate and that his father was in prison for murdering his mother.

Where true parental rights are in question the welfare of the infant is not the paramount test. *In Re K.* (*an Infant*) *Rogers and Another* v. *Kuzmicz* [1952] 2 All E.R. 877, the Court of Appeal held that the withholding by a parent of consent to an adoption could only properly be held to be unreasonable in exceptional cases; in determining in that case whether the mother's consent was unreasonably withheld the fact that the order if made, would conduce to the welfare of the child added to other facts was not evidence that her consent was unreasonably withheld. The Court approved the decision in *Hitchcock* v. *W. B.* [1952] 2 All E.R. 119. In that case the Divisional Court laid it down that different considerations applied on the making of an adoption order from those which applied on the decision of a question of custody, and that the mere fact that an adoption order would be for the benefit of the child did not answer the question whether consent was unreasonably withheld.

The distinction to be borne in mind is between cases where parental rights are involved and those in which, as *In Re D, supra*, they are not.

Increase in Crime

As we said in our article on the Criminal Statistics for 1956 (p. 36, *ante*), the figures seem to leave no room for doubt, that crime is more prevalent at the present time than it was in the pre-war years, and there is a rather disturbing increase in the commission of crimes of violence by the younger age group in recent years.

At the opening of the West Riding quarter sessions, His Honour Judge McKee presiding, said (we quote from *The Yorkshire Post*) that in the period January 1 to November 30, 1957, 18,890 crimes were recorded in the West Riding, an increase of 3,079, or nearly 20 *per cent.* on the previous year. The increase was mainly in offences of house-breaking, shop-breaking and larceny. A disturbing feature of the crimes committed was the number of juveniles involved. Of the 4,699 persons proceeded against, 1,942 were juveniles. It was also particularly disturbing to notice that last year 487 juveniles were proceeded against for shop-breaking, compared with 165 adults.

Police Help for Motorists

It is frequently emphasized that the primary duty of the police is to prevent the commission of offences, and that the more efficiently they do this the less time they have to devote to bringing offenders to justice. With a recent edition of the Derbyshire Constabulary Road Safety Bulletin there is a supplement dealing with the major points of the law affecting the equipment, use and maintenance of private motor cars. It is, of course, the duty of any citizen before he takes a car on the road to find out for himself what his legal obligations are as a driver, but experience suggests that a great many people do not take this duty as seriously as they should and hope for the best. It has to be admitted that it is not easy for anyone whose work is in no way connected with legal matters to be sure that he has not overlooked one or more of the innumerable regulations which the motorist is required to observe. This supplement is a most helpful document. There is a diagram of a motor car with arrows bearing letters A to Z and there is an accompanying chart which deals under each of the letters with a point of equipment and maintenance with which the motorist is concerned. The relevant arrow then indicates, on the diagram, the part of the car affected. Then on the back there are summarized the "laws which must be observed when using your car on the road." The references to the relevant statute or regulation is given in each case both in the chart and in the points dealt with on the back and the reader is advised that reference should be made to the Act or regulation for the precise wording. This supplement is fastened into the bulletin in such a way that it can be easily detached from it and we should think that a great many motorists would be glad to have a copy of it to study and to keep for reference. A great deal of trouble must have been taken in its preparation and it is a good example of the efforts which the police make to help the motorist to avoid breaking the law.

A point which motorists reading the supplement should bear in mind is that these requirements which they must observe are not imposed arbitrarily or without reason. Their purpose is to make vehicles safe to use on the roads and it is everyone's duty, and should be everyone's wish, to help to achieve this purpose.

Drivers Must Concentrate on Their Job

We have said on other occasions that one of the most important things for a driver to do is to concentrate on his job while he is driving so that he is at all times alert to respond instantly to any emergency which may arise. *The Western Morning News* of January 10 includes a report of a case in which a driver was fined £5 and ordered to pay £2 6*s.* 6*d.* costs for driving without due care and attention. The prosecution's case was based on the fact that he was driving with one arm round a woman passenger who was seated close to him with her head resting on his left shoulder. There was additional evidence to the effect that in going round a corner the car failed to keep to the near side of a white line in the road and that when the driver was called upon to stop the car swerved slightly before it stopped. We agree at once that these two things may well happen on occasions when a driver has both hands on the wheel and that, in our view, they do not add greatly to the strength of the case.

There have been cases before where a similar allegation has been made. A driver must necessarily have only one hand on the steering wheel when he is changing gear and when he is applying his handbrake and on other occasions, when he has to operate a wiper or a light switch for example, but at those times the hand not on the steering wheel can at once be brought back to the wheel if need arises. This seems to us to be very different from the position of a driver whose arm is round a passenger so that he cannot, we suggest, be free to withdraw it as easily and speedily as occasion may demand. We think that the chairman of the bench who dealt with the case summed up the position accurately when he said "You did not do your duty to the public of leaving yourself effectively free to deal with an emergency." We would add that the prosecution might consider, in such a case, whether a passenger with her head on the driver's shoulder, "going to sleep resting against his shoulder" (these were the driver's own words) is not aiding and abetting the driver in driving without due care and attention.

Passing Traffic Lights which are not Working

We have had recently a practical point which raises a question the answer to which is not easy to determine with certainty, and we think it may interest our readers if we deal with it in rather more detail than is possible in a practical point.

The essentials of the question are whether a motorist who approaches a set of traffic lights at a cross roads commits an offence against s. 49 of the Road Traffic Act, 1949, by failing to stop at the stop line when the light on his near side is showing no light at all but the light diagonally to his right, on the far side of the crossing, is showing red. In the instance which gave rise to the question the result was a collision in the intersection between the car of the driver who failed to stop and another vehicle which entered the crossing, on the green light, from his left.

Regulation 30 of the Traffic Signs Regulations, 1957, states that the significance of the light signals is that "the red signal shall convey the prohibition that vehicular traffic shall not proceed beyond the stop line on the carriageway provided in conjunction with the signals, or, if there is no stop line, beyond the signals." It can be argued that the light on the far side of the crossing should be linked with the stop line just as much as is the light on the near side, but we are not happy about this interpretation. There are many occasions on which a driver's view of the "diagonal" light on the far side is obscured, and the one to which drivers look is what is often called the "primary" light on their near side. If that light is not functioning a driver may well be past the stop line before his attention is attracted to the light on the far side to his right. This is a criminal offence which we are considering and we think that there is considerable doubt whether the distant light imposes an obligation to stop at the stop line. It is in some circumstances a help to drivers on the outside line of traffic whose view of the near side light is masked by other vehicles and it puts

them on their guard, but that is different from saying that a driver who has observed the near side signal standard and has seen that there is no light is criminally liable because he has failed, before passing the stop line, to see the distant light. In our view, until the High Court decides otherwise, it would not be safe to convict under s. 49 in these circumstances. We have in mind that it seems clear from reg. 30 that if there is no stop line no offence is committed until the red signal is passed and it cannot, therefore, be an offence to pass a standard which is showing no signal. Can the existence of a stop line make such a vital difference to the position ?

Another matter remains. A driver approaching a cross-roads is always required to use due care to see what other traffic is on the road. Where there are traffic signals which are not working this is an additional warning to him of the need for extra care, and the fact that there was on his right, on the far side, a red signal showing is admissible evidence if he is summoned, in the circumstances outlined, for driving without due care and attention when he comes into collision with another vehicle in the intersection. He might well have considerable difficulty in escaping conviction on that charge.

Putting His Foot in it

Most criminals nowadays take precautions about the matter of fingerprints, but fortunately they do not always realize that they may leave behind other tell-tale impressions on the scene of a crime. The *Newcastle Journal* reports a case in point.

A man who pleaded guilty at Sunderland quarter sessions to two offences of housebreaking and stealing, and asked for other offences to be taken into consideration, was said to have broken into the house of a man who was known to keep considerable sums of money in his house at times, and to have attempted to break in on a fourth occasion. So skilfully had he carried out operations on three occasions that it was thought to be an "inside job," and, says the report, there was nearly a break-up of the family. Fortunately on the fourth visit he trod in some oil and left the imprint of a heel, and, as previous cases have demonstrated, a footprint can provide a clue that leads to the offender and may be an important part of the evidence against him. This man pleaded guilty, and he was sentenced to 12 months.

Income Tax as an Excuse

The prisoner's explanation was that he was desperately in need of money. No doubt he was. He was stated to have left his wife and child several years ago and gone to live with a widow with two children and to have had two more by her. Because, he said, he was being taxed as a single man, he decided to work only six months of the year.

We can understand, though we do not commend, the attitude of some workpeople who refuse to do overtime on the ground that high income tax makes it not worth while to sacrifice leisure for what they regard as insufficient reward, but that is far from a deliberate refusal to work at all for half the year. The taxpayer can always seek guidance from the inspector and be sure of receiving all the allowances to which he is entitled. For the rest, he must pay what is due and not make a protest by putting himself out of work, which is a good example of the proverbial cutting off his nose to spite his face. If he had worked steadily and paid what was due with as good a grace as he could muster, he need not have been in so desperate need of money and land himself in prison.

Surety for Good Behaviour

Although a decision of quarter sessions is not a binding precedent, such a decision and the reasons upon which it is based can be of assistance to other courts, especially magistrates' courts. For that reason, we refer to a decision of the learned recorder of Blackpool on January 6 in the appeal *Bambing* v. *Barnes*.

Before the justices, the appellant was convicted of an offence against a local byelaw, the offence consisting of obstructing a person in a street by importuning for the purpose of obtaining custom, he being a photographer with premises abutting onto the promenade. He had been several times convicted previously of similar offences. The justices fined the appellant 40*s*. and also made an order under the Justices of the Peace Act, 1361, requiring him to find a surety for his good behaviour for 12 months, and in default of compliance to be imprisoned for eight weeks.

Counsel for the appellant submitted that it was inappropriate to invoke the power to require sureties in respect of a breach of a byelaw of minor importance, and sought to distinguish the case from that of *R.* v. *Sandbach, ex parte Williams* (1935) 99 J.P. 251. The order also had the effect of increasing the penalty provided by the byelaw. He also argued that any failure by the appellant to be of good behaviour might be held to be a breach of his recognizance whereupon the sureties might be called upon to forfeit their recognizances.

The recorder held that while the invocation of the powers given to the justices under the 1361 Act in the present case was an extension of the powers beyond any reported case, it was not essential to the proper exercise of the justices' power of binding over that actual breach of the peace in the sense of violence must either directly or indirectly be threatened. A binding over order was applicable to all cases where it was apprehended that a person will do something against the law.

In *R.* v. *Sandbach, ex parte Williams, supra*, the appellant had been convicted of obstructing the police by warning bookmakers so as to help them evade arrest. He had been previously convicted of similar offences. The Divisional Court held that the magistrate had power to order him to enter into a recognizance and to find sureties for his good behaviour if the magistrate apprehended that the appellant would do something contrary to the law, although there was no apprehension of violence towards any person, and although the defendant might become liable, in the event of a forfeiture of the recognizance, to a penalty greater than that which had been fixed by statute for the particular offence of which he had been convicted.

Supervision Orders

Although there are many points of similarity between probation orders and supervision orders, there are some important differences which must not be forgotten. The distinction is not always realized, and we have heard the question put whether a supervision order can be made in the case of an offender. We have also read of a boy being bound over for truancy, which is an instance of confusion. Proceedings in a juvenile court in respect of failure to attend school are not in respect of an offence by the child, but he is treated as brought before the court as in need of care or protection. Criminal proceedings, if any, are against the parent, and are heard in the adult court.

Until the coming into force of the Criminal Justice Act, 1948, probation

orders were made under the Probation of Offenders Act, 1907, the title of which indicated that the probationer had been found guilty of an offence, and the language of the later Act is perfectly clear on this point. A probation order involves supervision by a probation officer, but it must not be referred to as a supervision order, that being a term of art, applicable only to orders called by that name and made under the Children and Young Persons Act in respect of juveniles in need of care or protection or beyond control. There is no question of proceedings for a breach of a supervision order: all that the probation officer has to do in order to have the subject of the order further dealt with is to bring him before a juvenile court and satisfy the court that it is in his interests. A probation order cannot be made without the consent of the offender if he is at least 14 years old, but a juvenile does not have to be asked for his consent to the making of a supervision order unless it is being made in respect of a young person and it contains a provision as to residence or treatment for his mental condition.

A third class of orders of supervision consists of those generally referred to as money payments supervision orders. These are not likely to be confused with the other types of supervision, and the powers and duties of probation officers are quite different.

De Gustibus

In his first election address as a presidential candidate, Mr. Eisenhower mentioned (amongst other reasons why citizens of the United States should not vote for his opponent) the fact that, as he had been informed, a farmer in Great Britain was not allowed to cut down a tree without permission from the local authority. His information was defective, but evidently he had heard or read about tree preservation orders under the Town and Country Planning Act, 1947. We have been reminded of the President's misapprehension by some oddities of town and country planning which have appeared lately in the newspapers. We suggested last year that when a council of a non-county borough or an urban district would like to brighten its litter bins, and at the same time earn some money in relief of rates, by allowing them to be used for advertising, this was really no business of the county council. So, again, when a householder erected in his garden a statue put together by himself from discarded bits of paving stones, we should have thought the planning authority might have left him to himself. This being England, it might have to be conceded that the Director of Public Prosecutions would have been entitled to consider whether the criminal law had anything to say if a man put Priapus in his garden within sight of the street, but there was no suggestion of that kind. The thing seems, according to the newspapers, to have been massive, and likely to be judged ugly by people whose artistic enlightenment is based upon the classic models — although a correspondent, who sent us some cuttings from local newspapers, holds that it was no uglier than some of the modern statuary enshrined in the Tate Gallery, or (what he calls) the abortions exhibited by the London county council in Holland Park. The Minister of Housing and Local Government was apparently of the same opinion, for he allowed the amateur sculptor's appeal, after the planning authority had issued a circular inviting the views of more than a hundred neighbours, of whom one in six replied expressing dislike, and most did not care one way or the other.

But why should public authorities, at national or county level, be expected to concern themselves ?

Our feeling is much the same about another case mentioned in the London newspapers in January, when an appeal to the Minister was pending. A man built himself a house on three sides of a courtyard with the chief windows looking inwards. The fashion is ordinary in countries where excessive sunlight is experienced, but unusual here, where people generally wish to get whatever sunlight they can on all sides of the house. The objection taken by the planning authority seems to have been that looking inwards at a courtyard was un-neighbourly. If the Minister upholds them in this case, there will be no logical reason why they should not seek power (if it does not yet exist) to require householders to use identical curtains in all the front windows in a road, or to provide themselves with aspidistras of uniform size. We are reminded of a local authority which tried some years ago to prevent the use of flat roofs on dwelling-houses, on the ground that these fostered immorality; there was another some years earlier, which expressed the opinion that sexual irregularity would be encouraged if building materials other than brick and stone were allowed to be used for dwelling-houses.

We remarked above that this is England. Sometimes we wonder.

Dangers of Informality

The clerk of the rural district council of Malling has been good enough to send us the transcript of a judgment by Pilcher, J., in a case in which the council were respondents. This was a Case Stated by an arbitrator, upon a claim for increased fees by an architect who had been responsible for several housing schemes in the rural district. The contract for the architect's employment was made in 1945, and work had gone on for some 10 years. From time to time the architect had represented to the council that the fees agreed in 1945 were unreasonably low, because of changing circumstances: not so much the general fall in the value of money (which would in the ordinary way be offset by increased building costs, upon which the architect would receive a percentage) as by reason of changes in the work to be done and of the scattered situations of the council's properties. The council agreed on several occasions to pay higher fees, but a time came when they and the architect were no longer able to agree, and the matter went to arbitration. It is impossible here to set out the whole story as given in his lordship's judgment: the most important point seems to be that in September, 1950, the council had held a meeting attended by the architect, as the result of which they agreed to pay him about half of what he had said ought to be the increase in his fees for future work. He accepted this figure; continued working, and received periodical instalments for several years longer, but, when the dispute finally came before the arbitrator, he gave evidence to the effect that he had not agreed to accept the increase decided upon by the council, and that, when receiving it, he had in his own opinion been receiving payments on account. The arbitrator accepted this contention, and counsel for the architect argued before Pilcher, J., that the point was one of fact, on which the arbitrator's decision was conclusive.

Pilcher, J., on the other hand, looking back at records made in 1950, concluded that the architect's acceptance in that year of the increased remuneration offered had been in full satisfaction of his claim, in respect of the work remaining to be done.

There were other points in the Case Stated with which we have not space to deal. The moral of the story seems to

be that contracts for varying a previous contract can be dangerous, unless the variation is put into writing and explicitly agreed.

In this Malling case, as we understand the facts, the council's officials who held office at that time can hardly be blamed for any informality. The correspondence read by the learned Judge seems to show that everything was dealt with on a friendly footing, and it was only years later that the architect desired to re-open the agreement under which he had received the fees from 1950 onward. It need not be supposed that his eventual claim was not *bona fide*: there could have been genuine misunderstanding. The only way to prevent such misunderstandings is to put everything in writing at the time.

MADDING WHEELS *

At 121 J.P.N. 609, we analysed the different types of street parking, and examined the circumstances in which each type is or may be illegal, in hopes that our doing so would be helpful, first towards securing enforcement of the law and secondly in deciding what amendments of the law are needed. A learned correspondent, who tells us that he does not differ from our assessment of the present legal position, writes to suggest that nevertheless we are approaching the problem in the wrong way. The person, he suggests, who provides himself with a motor car does so for the purpose of reaching a destination, but it would be futile in the ordinary case to turn round and drive away at once. It ought therefore (this correspondent suggests) to be made the duty of local authorities to provide free parking places, just as highway authorities provide free highways; without parking accommodation at or near the motorist's destination the purpose of his having provided himself with a car will have been defeated. We have ourselves in past years urged local authorities to make much more use of the power given to them in 1925, of providing parking places off the highway. We have urged this as a means of helping to clear the streets; in some cases it would be a means of obtaining revenue, and even though the revenue might in other cases not cover the loan charges for many years the outlay would have been worth while. Ten years ago it would in many towns have been much easier than it is today to obtain land for the purpose. Opportunities afforded by bombing have been lost; where bombed sites were made available for parking they were most often left in a rough state which was unattractive (especially to owner drivers) in bad weather, and many of them were left in the hands of people other than the local authority. It would be more difficult in London and in most towns to provide proper parking places today, because the bombed sites have been developed, or are now being developed for other purposes, and at the same time the number of motor cars, especially those belonging to owner drivers of small means, has increased beyond anything that was foreseen 10 years ago. Absence of proper parking places has been one reason for failure to enforce the law about obstruction of the highway, and at the same time the habit of obstruction has grown by toleration, until it has been found difficult to induce motorists to use parking places off the highway, even when these are available. Even in central London a half-filled parking place, which does not form part of a street but opens from the street, is a familiar sight, at a time when neighbouring streets are cluttered up with cars, often left throughout the day. For the absence of proper parking places local authorities are chiefly to blame. (At the inquiry in Marylebone in December, about parking meters, a representative of the borough council admitted to Sir Reginald Sharpe, Q.C., that none had been provided by them, although it is one of the boroughs most conspicuous for illegal parking in the streets.) With all respect, however, to our learned correspondent, we regard his suggestion that local authorities owe a duty to the motorist to provide free parking as being an illustration of selfishness, much like that of a correspondent of *The Times* whom we quoted in an earlier article, as having maintained that the police ought to keep the streets near his office free from vehicles bringing other people to other offices on business, in order that he might leave his own car from 10 *a.m.* to 5 *p.m.*

We admit in our own correspondent's favour that he does not, like the correspondent of *The Times*, claim to place his car in the highway when he has reached his destination; he merely asks that equivalent space, equally free of charge, shall be made available to him. It is true also that in terms he only asks for this for such time as it takes him to do whatever he has come to do at his destination. The law, however, as it stands at present does not preclude his transacting business at his destination—within reason. As we pointed out at 121 J.P.N. 704, in a short note about an episode at Windsor, persons arriving by road at premises where they have business would often, if it were not for the selfishness of persons who have placed cars there for a whole day or for hours at a time, be able to transact that business quickly, after which they would drive off. The position about this (and much else that is relevant) is admirably set out, and no statement of the law as it stands at present can improve on what is said, in the judgment to which we have more than once referred of Sir George Jessel, M.R., in *Original West Hartlepool Collieries Co.* v. *Gibb* (1877) 41 J.P. 660.

Nobody would maintain that the law as it stands meets all the needs of the modern world. We have already urged that it should be considered afresh as a whole, in the light of the requirements of today. This, however, is a long term matter. No reasonable person expects highway authorities to be able for many years to come to provide all the space which ought to be provided for moving vehicles, let alone for standing vehicles. In a letter to *The Times* of November 21, Mr. John Scott Henderson, Q.C., refers to a report in that newspaper, that road congestion costs the country £465 million a year. He truly says that congestion is caused by the increased number of motor vehicles using the highway, not only for transit but for parking. He goes on to say that the present law dealing with obstruction is so out of date that the police are unable to enforce it. Although we agree with a great deal of what he proposes in the remainder of his letter, we do not accept this word "unable." We believe that the police, certainly in London, and to a varying extent in provincial towns, are unwilling to enforce the law. They wish to avoid friction with an influential and very vocal part of the community, and they know that magistrates and members of watch committees and standing joint committees, like members of the House of Commons, are very often motorists who find it difficult to consider obstruction of the highway without an unconscious bias in favour of the motor vehicle.

Mr. Scott Henderson's central suggestion for a remedy is a new enactment, making it an offence elsewhere than upon an

*See *Paradise Lost*, VI, 210.

appointed parking place to leave a vehicle on a highway for more than (say) 10 minutes, which would give time for setting down a passenger or making a temporary call. In truth, this would not be very different from re-enacting with greater precision what is the law at present, although the present law admits an elasticity about the period, which can be studied in decided cases. He goes on to suggest a penalty which would increase with every quarter of an hour, subject to a defence of necessity or proof that actual obstruction was unlikely. The last point would, by the way, have to be considered carefully, in the light of the decision in *Solomon* v. *Durbridge* (1956) 120 J.P. 231, and of the twofold aspect of obstruction, namely, obstruction of persons who have actually wished to use that part of the highway, and obstruction of the highway itself. Where parking places are appointed in the highway, he suggests that they should be available without charge for two hours, which would be enough for the average business or professional call. Leaving a vehicle longer should, he thinks, attract the same penalty as leaving it for more than 10 minutes in a part of the highway which is not a parking place. Motorists who wished to park their cars for more than two hours should be made to use garages or off-street parking places. He does not adopt the suggestion of our own learned correspondent, that these last should be free of charge. He sees, as we see, no reason why the owner of a motor car should expect the public to provide him with free parking space while he is at work or in bed; we might add, while he is spending the evening at home, at the theatre, or at the house of friends.

Before leaving what Mr. Scott Henderson says about properly appointed parking places, either in the street or on land laid out for the purpose by the local authority, we must notice two apparent oversights in his letter, which are strange on the part of a lawyer who has been especially concerned with local government, and is moreover recorder of a large city, where appeals under s. 68 of the Public Health Act, 1925, might have come before him. He says that an occupier of property should have the right to object to provision by a local authority of a parking place adjoining his property, and to make this objection to a court. This is precisely what s. 68 (3) of the Act of 1925 already enacts for the provinces, and it might be a precedent worth extending to the fixing of parking places in streets in the London Traffic Area, which falls under s. 10 of the London Traffic Act, 1924, where private persons are not given the same rights.

Again, Mr. Scott Henderson suggests that the occupier of any property should have the right to initiate proceedings against a motorist who parks unlawfully and obstructs the occupier's access. This again is the existing law, both criminal and civil. Occupiers of property do not, in practice, start proceedings of either kind for three pretty convincing reasons, apart altogether from natural inertia. First, it has become extremely doubtful to what extent the magistrates' courts can be relied upon in matters of obstruction, while civil proceedings would commonly result in nominal damages at most. The particular defendant might be kept away in future, but someone else would take his place. Next, the private person has no means of ascertaining easily the identity of the offender. He can take the number of the car, but he has no means of discovering, without police assistance, who drove it at the time of the offence. Lastly, and not the least important, the ordinary householder or shopkeeper can hardly be expected to undertake personally the invidious task of bringing his neighbour into court. When his exasperation boils over, he may complain to the police, but it is their general refusal to interest themselves in such complaints which has brought about the present mischief.

Mr. Scott Henderson does recognize the existence of a problem which is often overlooked by persons who justly grumble about the present state of things and favour various time limits. That is to say, he suggests that local authorities should accept responsibility for enforcing time limits imposed upon parking in a street, instead of leaving this to the police. We do not accept the excuse commonly offered by the metropolitan police and other forces for inaction, namely that they cannot spare the men. We believe that, if there was the will to enforce the present law, means could be found; for example by using small mobile squads as we suggested at 121 J.P.N. 612, instead of leaving it to constables on the ordinary beat.

The problem would, however, become unmanageable by the police if fresh legislation were introduced which involved not only constant timing at authorized parking places, but also for the 10 minute stops elsewhere. An extended use of parking meters could be made at the authorized places, but this would not help with the much more serious problem of standing too long in other places. Mr. Scott Henderson suggests a system of collecting fines upon the spot, apparently by the local authority's inspectors. This is a familiar suggestion in other contexts; the system has been said to work well in other countries, where it has existed since before the days of motor cars. Its introduction in England has always been resisted for several reasons, and, in regard to parking, there is the special feature that more often than not the offending driver is not in the vehicle, so that the inspector would have to wait for the driver's return. The idea might, however, be worth trying as an experiment, in order to discover whether the time lost in waiting for the driver was large enough to offset the time lost at present by attending magistrates' courts to prove the offence.

We certainly do not think English lawyers ought to close their own minds to a limited application in this sphere of this suggestion, coming as it does from counsel of Mr. Scott Henderson's experience. If local authority inspectors were available, as well as the police, it would be easier for the ordinary householder to get some help against the nuisance of protracted standing by other people's cars in such a way as to deprive him of access to his premises, and particularly against the outrage in residential roads of their being used as permanent standing places for vans and lorries belonging to traders whose business premises are elsewhere. (*See* this aspect displayed in a contribution at 121 J.P.N. 575, from a London householder who had particular cause to be aggrieved by police indifference.) Replying to Mr. Scott Henderson's letter, another member of the bar argued in *The Times*, like our own correspondent mentioned at the outset of the article, but with more particularity, that the highway should be regarded not merely as a means of reaching a destination, but as a place at which the traveller can leave the machine which brought him there. Since there is no prospect in any future that can be foreseen, of the provision of parking places apart from the highway on any scale which would meet the growing demand, this writer suggests that highways should be designed to serve the dual purpose of transit and of standing at the destination. This might be well enough for future highways, except for several facts which the argument ignores. One of these facts is that a road surface equal to carrying modern motor traffic is absurdly extravagant as a place for standing vehicles. (It is a fact which is commonly ignored by persons who assert a claim to leave cars on the highway, that a modern street surface is about the most expensive way of

providing parking space.) Moreover, if new highways were designed for parking at the destinations of all motorists, as this writer in *The Times* has in view, the highway at those destinations would itself assume the character of a parking place, and—even apart from cost—there would have been no gain to the flow of traffic, as compared with the provision of a proper parking place. Thirdly, this writer (like our own correspondent) has assumed that the standing car needs to be accommodated only at a destination to which it has been driven for (presumably) a purpose that will be achieved, after which the motorist will remove the car. He ignores altogether the growing number of vehicles which are left upon the highway, not merely while their owner or other driver is at work, but during the larger part of the 24 hours, while he is asleep or resting. It is possibly significant that this writer says: "the only way to make motoring useful to the vast majority of motorists is to regard the highways both as roadways, and as parking places"—he forgets that even the vast majority of motorists are not the whole, or even the majority, of the country's inhabitants.

Since we have to a great extent endorsed the views put forward by Mr. Scott Henderson, it is right that we should mention one other adverse comment on his letter printed by *The Times*. This was by a correspondent who argued that enforcement of the present law would not injure the firm which employs a driver, or the small number of relatively wealthy motorists, but would hit the innumerable owner drivers who are obliged to leave their cars because they do not employ a chauffeur. It cannot be denied that there is some force in this contention. Equally, it cannot be denied that the owner of a car who leaves it all night upon the highway may often do so because he cannot afford to build a garage or to acquire land for doing so, and because there are not enough garages available for hiring.

The answer surely is that a man's having a relatively small income does not entitle him to encroach upon other people's rights, or to allow his property to be a public nuisance in this sphere, any more than in the sphere of public health or any other. A generation ago a far sighted Minister of Health startled his contemporaries by stating that in his opinion a local authority providing houses for the working classes ought to be at liberty, if it wished, to build garages for the tenants. This has not generally been done, even by local authorities, and even although local authorities are no longer confined to building for the working classes. It has not been universally done in building by private enterprise. In the residential areas which have grown up since 1945 there are miles of frontage where cars are to be seen standing all night upon the highway, because there are no garages and the skilled artisan of today tends more and more to regard a motor car as a necessity of life. If garages had been provided it may be said that the rents would have been higher. This is true enough, but the present position is that the occupiers of these houses are, by encroaching upon public rights, enabled to provide themselves with cars at less than an economic cost. Can it be that before long planning authorities will be driven to make it a condition of housing development that a garage shall be provided, or at least that there shall be space upon which the householder who buys a car can put a garage for himself ?

This, however, would be a long term remedy. Even if planning authorities took to imposing such a condition, and the Minister of Housing and Local Government felt justified in upholding them in face of the opposition which would be aroused, it might take half a century for the policy to become effective. Meanwhile a million or so new homes, consisting either of small houses or of flats, would have provided themselves with motor cars. We stress this aspect of the problem (that is to say the "home" end of the owner driver's journey) because it is not touched upon at all by those critics of our previous articles who have argued in favour of free accommodation for the motorist at his destination. Is their argument to be understood as being that accommodation ought also to be provided at the public cost at the point from which the journey starts? Again, taking those critics up on the words of their own suggestion, is there to be no distinction between a short stay outside a shop; or the driver's stay at luncheon, or even a couple of hours for a business conference (which typically will not always be in the same place), and, on the other hand, the habit of leaving one's means of transport on the highway outside the place where one spends all the working hours of the day ? It is the merit of Mr. Scott Henderson's proposals that he does recognize, as the High Court has recognized for many years, that there are differences in fact, and can properly be differences in law between these forms of parking at the destination. One of our complaints about the way in which the police are now failing to enforce the law is that vehicles are habitually left for half a day or the whole day in business areas, in places where they would be unobjectionable during a stay of a few minutes, but where (as things now are) they effectively prevent other vehicle owners from paying even a short visit to adjacent premises.

We repeat what we said last year at p. 609, that it is high time for the Government's advisers to examine the problem in all aspects, instead of playing month by month and year by year with little bits of it, and then Parliament should decide what is to be lawful and what must be forbidden. And we mean forbidden: not that the forbidden course shall be tolerated at the pleasure of a constable or even a chief constable.

We repeat also that meanwhile the present law must be enforced, in the interests of motorists themselves; of other users of the highway; of occupiers of adjacent property, and —by no means least—of general respect for law.

How can the teddy boy, the ex-borstal boy, and the impecunious man with legitimate calls upon his purse, be expected to obey the law when it is flouted daily by half-a-million motorists, with connivance by the police and by successive governments ?

ADDITIONS TO COMMISSIONS

BIRKENHEAD

Joseph Alexander Duncan, Home Farm, Landican, Birkenhead.
Bernard van Engel, Pipers Cottage, Delavor Road, Heswall, Cheshire.
Charles Douglas Gracey, 12 Riviera Drive, Birkenhead.
Denis Robertson Green, 34 Egerton Road, Birkenhead.

BRIGHTON

Harry Brogden, School House, Dyke Road, Hove, 4.
Charles Edward Hall, 45 Sanyhils Avenue, Brighton 6.
Francis Roy Phillips, 29 Preston Drive, Brighton, 6.
Eric Guildford Wellings, 10 Old Shoreham Road, Hove 4.

KINGSTON-ON-THAMES BOROUGH

Leonard Cecil Dale, 81 Alfred Road, Kingston-on-Thames.

RADNOR COUNTY

Ronald Hier Spoonley, c/o British Railways, Builth Road Station, Llanelwedd.
William Leonard Wilding, 3 Nelson Street, Llandrindod Wells.
Mrs. Martha Olwen Davies, Cefnfaes, Rhayader, Rads.
Verney Watson Pugh, Cwmwhitton, Whitton, Knighton, Radnor.

SECTION 8 AND S. 2 OF THE FOOD AND DRUGS ACT, 1955

When a local authority receive a complaint that a foreign body has been found in some article of food, such as a currant bun, a pork pie, or a bottle of milk, it is not always easy to select the correct offence to charge in the consequent legal proceedings. First a choice has to be made between s. 8 and s. 2 of the Food and Drugs Act, 1955, and then if either section is chosen, one of several possible offences has to be selected. Whereas it is not intended to write a detailed commentary on these two sections (this has already been done in *Bell*, 13th edn.), it was thought that an examination of the sections in the light of recent reported cases might be of some assistance.

It is suggested that s. 8 should be examined first, as being the more serious offence; under the 1938 Act, the maximum penalty was greater under s. 9 (now s. 8) than it was under s. 3 (now s. 2), but under the 1955 Act the maximum penalty is the same for both offences (*see* s. 106). It is an offence not only to sell unsound food, but also to offer or expose such food for sale, to have it in possession for sale, etc., or to consign it to another person for sale;* and the appropriate charge from the nine possible offences must be selected. In order that proceedings under s. 8 may succeed, it must be shown that the food has been rendered *unfit* for human consumption—a lump of metal or a piece of string in a bun does not contaminate the food, and so does not amount to an offence under this section (*J. Miller Ltd.* v. *Battersea Borough Council* [1955] 3 All E.R. 279; *Turner & Son Ltd.* v. *Owen* [1955] 3 All E.R. 565); on the other hand it was held in *Chibnall's Bakeries* v. *Cope Brown* [1956] C.L.Y. 3591, that a charge brought in respect of a loaf of bread containing part of a used and dirty bandage, was correctly laid under s. 9 of the 1938 Act.

It should also be noted that the fact that the food in question has been seized and condemned by a magistrate under s. 9 is not necessarily conclusive that an offence has been committed under s. 8 (*Waye* v. *Thompson* (1885) 15 Q.B.D. 342). As the section prohibits the sale, etc., of unfit "food," it seems that one information can be laid to cover the sale of several articles of food, all of which are unfit (*see Kite* v. *Brown* [1940] 4 All E.R. 293—decided on the rationing provisions of the Defence Regulations).

When one turns to s. 2, the following points must be considered: (*a*) the information can be laid only in respect of a *sale*—exposing or offering for sale is not sufficient; (*b*) the sale must be shown to have been to the prejudice of the purchaser; but this does not mean that he must necessarily have suffered any actual damage. The existence of a foreign body in an article of food will normally be considered to have been "to the prejudice" of the purchaser without further proof, provided, of course, the existence of the foreign body (as, for instance, in the case of the packet of breakfast cereals offered for sale containing a child's toy whistle or other "stupendous free gift") has not been brought to the notice of the purchaser by the vendor (*see Bell*, 13th edn., at pp. 12–17); (*c*) the section contains three separate offences—the food not being of the "nature," not of the "substance," or not of the "quality" demanded, and an information which alleges all three of these (*Moore* v. *Ray* [1951] 1 K.B. 98), or charges the three in the alternative (*Bastin* v. *Davis* [1950] 2 K.B. 579) will be bad for duplicity.

The draftsman of the information must therefore decide whether he is going to charge "nature," "substance" or "quality." A foreign object in food is almost certainly not capable of constituting a "nature" offence, and if there is to be the offence of "not of the quality," the foreign object must, it is submitted, be capable of affecting the food itself in some way, as in the case of a decomposing house fly in a bottle of milk (*Newton* v. *West Vale Creamery Co.* (1956) 120 J.P. 318). In the case of a sterile or in itself harmless foreign body, such as a piece of string (*Turner* v. *Owen, supra; see Bell, op. cit.*, p. 43), a sterile milk cap (*Edwards* v. *Llaethdy Meiron* [1957] 3 C.L. 461), or a bristle in a bottle of milk (*Lovell* v. *Andover Corporation* [1958] Crim. L.R. 46), it seems that the information should allege "not of the substance" (as should have been the case, it is submitted, in *Lindley* v. *Horner* (1950) 114 J.P. 124, where a nail was found in a sweet and the information alleged—wrongly as it now appears—"not of the nature, substance or quality demanded"). However, the mere existence of a foreign body in food is not sufficient to constitute an offence under s. 2 under the "substance" heading, if the foreign body itself is not harmful in some way, as would not be the case with a sterile milk bottle top in a bottle of milk (*Edwards* v. *Llaethdy Meiron, supra*, applied in *Lovell* v. *Andover Corporation, supra*). Moreover, it does not necessarily follow from the decided cases that the three categories, "nature, substance and quality," are mutually exclusive; they may well overlap, in particular as to "substance" and "quality."

If the "foreign body" in the case of a bottle of milk is not really a foreign body at all, but is a stain on the inside of the milk bottle, the information should not be laid under either of these two sections of the 1955 Act, but should be laid under reg. 26 (1) of the Milk and Dairies Regulations, 1949 (made under the Food and Drugs Act, 1944, and kept in force by the joint effect of s. 36 (2) of the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950, and s. 136 (2) and sch. 12 to the Food and Drugs Act, 1955). Under this regulation every dairy farmer or distributor (terms which are defined in reg. 2; it does not have to be proved in these proceedings that the defendant has been duly licensed under the regulations as a dairy farmer or a distributor, as the case may be) must ensure that every "vessel" (an expression which includes a milk bottle: *see* definition in s. 135 (1) of the 1955 Act) used for containing milk is, immediately before use by him, in a state of "thorough cleanliness." Provided the facts are established, this regulation imposes an "absolute" liability, to which there can be virtually no defence (*Quality Dairies (York) Ltd.* v. *Pedley* [1952] 1 K.B. 275), but difficulties may arise in connexion with the jurisdiction of the court if attention is not paid to the point, as the offence is committed, it is submitted, where the milk bottle is "used," *i.e.*, filled, and not at the consumer's premises, from whence the complaint will normally arise. In the case of proceedings under s. 2, the venue will be the place where the sale takes place, *i.e.*, in the case of milk, at the consumer's premises (normally), or otherwise at the vendor's shop.

*In each case the food must be *intended* for human consumption; but the presumptions of s. 111 will assist here.

If the draftsman is in doubt as to which of the several offences under s. 8 or s. 2, or the regulations here discussed, is established by the particular facts of the case before him, there is presumably no reason why he should not lay several informations each charging a separate offence (as indeed was suggested by Lord Goddard, C.J., in *Bastin* v. *Davis, supra*), but if the prosecutor cannot subsequently satisfy the magistrates that each charge was made in "good faith," an order for costs may be made against him in respect of any charges that are dismissed (Costs in Criminal Cases Act, 1952, s. 6 (3)).

Next time Parliament devotes its attention to this subject (which seems by recent form, to be every five years or so), it is to be hoped that it is made an offence simply to sell any food containing a foreign body—ss. 2 and 8 can be left to cover the type of cases for which they were clearly designed—and it would then be possible for the local authority to take proceedings in these cases with considerably more confidence. After all, when a member of the public complains of finding a foreign body in his milk—or bath bun or fruit cake—he expects the local authority to take proceedings. The local authority in their turn consider they have a public duty to prosecute, if only as a deterrence to others.

J.F.G.

A CHILD'S GUIDE TO LOCAL GOVERNMENT—II

My dear son,

In my last letter, I began to discuss some considerations you should bear in mind when seeking to be elected to a local council. You will, of course, have to canvass from door to door. This is the most tiring physical exercise ever devised. Remember to beware of the dog, to disregard other notices by which the occupier seeks to preserve his personal privacy in the only place left to him, to close all gates and to keep smiling. Before knocking, refer to the Register of Electors so that you can address the voter by name. When the door is opened, state the name on the register on a rising inflection and withdraw one full pace. Only experience will teach you the astonishing variety of responses your "Mrs. Smith?" can elicit. Shrieks of inconsequent laughter in which you join at your peril, a curt request that you step out of the flower bed, a simpered acknowledgement which to your tired mind seems terrifying in its implications, a shout for "Dad!" without turning the head or relinquishing your gaze, the belligerent "Yes, what do *you* want?" on the upper middle-class door steps, the sudden and totally unexpected emission at catapult pace of the small son of the house, bringing you up short and gasping against the insecure wooden paling of the garden fence—these are but a few of the emotional reactions your visit will stimulate. But, on the other hand, you will also meet great courtesy, sympathetic understanding and even a cup of tea.

In all this you will, of course, completely ignore your opponents. No indication that you know of their existence must be given, and, *a fortiori*, no criticism of them. Speak of what you will do, not of them. Do not be trapped into time-wasting arguments with those who will never vote for you. Speak, be seen, hope for support, and be off. Any mud slung at opponents must not come from your hand. Indeed one of your (and your agent's) most difficult tasks will be to restrain the enthusiasm of your less intelligent friends who, regretting the old days, will seek to blacken your opponents' reputations.

Amongst others seeking election will be some Independents. These fall into two major groups: genuine and non-genuine. The Genuine Independent may be a man who sincerely believes there should be "no politics in local government." He stands on his local position (which may be strong and of some antiquity). He will draw support from the considerable body of voters who distrust all politicians, especially in local affairs. He puts "the town" (or whatever it may be) first, the country second and parties nowhere. You, of course, will also be putting "the town" first, except to the party caucus, but there is no denying he has the edge on you in that respect. You can only hope to beat him because of your superior organization, including your greater number of motor cars (*see below*). Fortunately your hope will frequently be justified, and it may well be that by the time you are old enough to stand for election the Genuine Independent will, like his Parliamentary brother, have passed away. The Non-Genuine Independent is more difficult to handle. He is, either avowedly or by arrangement, standing as an independent but with the support of a party. There is, no doubt, a touch of contradiction about this. It is sometimes presented as "a typically English compromise" which means here, as so often in other contexts, a determined effort to have it both ways. He is Independent, he eschews party politics, he stands for himself and "the town," he is free and accepts no orders and, at the same time, he is supported by one of the principal parties, he accepts their help and comes under an obligation to them. If he is elected, he must decide whether to repay them by voting as they vote or to double-cross them and act like a Genuine Independent. Almost always he follows the first course, thereby ensuring their similar support at the next election. It is only fair to add that the Non Genuine Independent inclines, in practice, more to the Right than to the Left.

On the election day, the main occupation is, of course, to persuade, ully, cajole and encourage your supporters (keeping within the meaning of the laws against bribery, treating and undue influence) to leave their gardens, allotments, firesides or sporting activities and to register their votes. All the work you have done in the past weeks goes for nothing before the blank and slightly hostile face presented on "the day" to your question whether its owner has yet had time to vote. "Is there an election, then?" is a devastating riposte which you must learn to counter with a smile and a shortened version of your election patter.

The better organized campaigns will include a fleet of cars to carry voters to the poll. Lists will have been compiled by canvassers of the names and addresses of the aged and infirm and the times when they can be collected. Nothing is certain in this world. I recall an occasion at a county council election when a most expensive limousine swept to the polling station where stood the rival candidates. The lady at the wheel leapt out like a trained chauffeuse, sprinted elegantly around the back and opened the car door. At the same time, the candidate whose colours hung and streamed from the body work of the vehicle advanced with outstretched hand and beaming smile. There emerged with difficulty the cheeriest, dirtiest old man. He thanked his driver nicely and shook hands all round. As he passed into the polling station he said two words to the other candidate. They were "Watcher, cock" and were accompanied by a wink so expansive that it convulsed his face into a spasm of conspiracy. The car was not waiting to take him home when he emerged.

In these days you must not expect those who accept lifts to be restricted to the old and weak. Many of the younger generation also like to ride in cars. Then there are mothers who cannot leave their children for more than the shortest of periods. The lazy, too, can put a cross on a voting paper as well as any man, once they are within striking distance of the booth. Be careful not to offend the salt of the earth—the same who gave you cups of tea when you were canvassing. They will crawl on their hands and knees before accepting your transport favours. Leave them alone. They know where they are going.

Finally, you will have to decide about loudspeakers. They are the only sure way of bringing the fact of the election to every man, woman, and child. Loudspeaker announcements from moving cars are always listened to. But they undeniably stiffen electorate resistance. They awaken children and terrify other small animals. Men choke over their beer; women drop stitches. Everyone believes himself to be a born broadcaster and so loudspeakers tend to get into the hands of amateurs. Even the most rational citizen, given a microphone and an audience, loses his head. He may fight down the urge to sing popular songs in the High Street but he will never stick to his brief. Almost certainly he will attempt to be humorous and, for fairly obvious reasons, it is not possible to be funny in these circumstances. The audience is hostile, the time unpropitious, the place too public. The car with its happy, bellowing, stage-struck enthusiast passes on leaving behind a chaos of shrieking children, hysterical dogs, and infuriated citizens. The percentage of those voting will be lower than ever. I do not recommend the extensive use of loudspeaker equipment.

Your affectionate father,

J.A.G.G.

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A sentence of detention in a detention centre must, unless the offender is of compulsory school age, be for not less than three months or for such lesser period as equals the maximum term of imprisonment that could be imposed for the offence. (Criminal Justice Act, 1948, s. 18 (1).)

PERSONALIA

HONOUR OF KNIGHTHOOD

The Queen has approved that knighthoods be conferred upon Mr. Justice Geoffrey Walter Wrangham, Mr. Justice Herbert Edmund Davies and Mr. Justice Richard Everard Augustine Elwes on their appointments as Judges of the High Court of Justice.

APPOINTMENTS

Mr. John Frederick Drabble, Q.C., has been appointed to succeed Judge Charlesworth, who died in December, last, as county court Judge for the Newcastle, Durham and Northumberland Circuit. He is 51 years of age. Mr. Drabble is already known on the North-Eastern Circuit in which he practised after being called to the bar in 1931. He took silk in 1953 and in the 1955 General Election he contested Huddersfield West, unsuccessfully, as the Socialist candidate. In 1945 he had contested the Hallam division of Sheffield. Last year he relinquished the recordership of Huddersfield to become recorder of Hull. Judge Charlesworth had been Judge on the circuit since 1953, *see* our issue of January 11, last.

Mr. Norman Harper, recorder of Bradford, has been appointed county court Judge on the Kingston-upon-Hull Circuit, No. 16, and has relinquished his recordership. He was called to the bar by the Inner Temple in 1927, after being educated at Magdalen College, Oxford. He was recorder of Richmond from 1944 until 1951 and recorder of Doncaster from 1955 to February, last year, when he was appointed recorder of Bradford.

Mr. P. Cotton, who had been deputy clerk and deputy chief financial officer of Stowmarket, East Suffolk, urban district council for seven years, commenced his new duties as clerk to Woodbridge, East Suffolk, urban district council, on February 1, last. Mr. Cotton succeeded Mr. Philip Conrad, now clerk to Wainford, East Suffolk, rural district council, *see* our issue of December 7, last.

OBITUARY

His Honour Owen Thompson, Q.C., formerly county court Judge on Circuit 46 (Willesden) and Circuit 40 (Bow), until his retirement in 1940, has died at the age of 89. He was educated at University College School, London, and Trinity College, Cambridge, where he gained the Chancellor's English Medal in 1888 and a first class in the Classical Tripos, parts I and II. He was called to the bar by Lincoln's Inn in 1893. He enjoyed a large practice as a junior in the Chancery Division and in 1919 took silk. In 1928 he accepted a county court appointment from Lord Chancellor Hailsham. He was subsequently made a bencher of his Inn.

Mr. Arthur Edgar Jalland, LL.B., Q.C., recorder of Preston, Judge of Preston Borough Court of Pleas and chairman of Lancashire county quarter sessions since 1950, has died at the age of 68. He was educated at Manchester University and was called to the bar by Lincoln's Inn in 1911. In the previous year he had gained his LL.B. He was a justice of the peace for Lancashire and the borough of Preston in 1950. In 1929 Mr. Jalland had contested the Knutsford Parliamentary division for Labour.

NEW STATUTORY INSTRUMENTS

1. **FACTORIES.** The Work in Compressed Air Special Regulations, 1958.

These regulations impose requirements for the health, safety and welfare of persons employed in compressed air on work of engineering construction.

Coming into operation April 21, 1958. 1958. No. 61.

2. **PATENTS.** The Patents Rules, 1958.

These rules which come into operation on February 1, 1958, consolidate and replace the Patents Rules, 1949 (S.I. 1949/2385); the Patents (Amendment) Rules, 1955 (S.I. 1955/117); and the Patents (Amendment) Rules, 1957 (S.I. 1957/618); and prescribe the procedure to be followed in making applications for patents and in other proceedings under the Patents Acts, 1949 and 1957, and also prescribe the forms to be used and the fees to be paid in respect of such proceedings and other matters relating to patents arising out of the Patents Acts, 1949 and 1957.

They also amend the rules by:

(1) omitting from r. 38 a provision for extending the revised period for putting a patent application in order for acceptance since it is no longer of any practical effect;

(2) extending from six weeks to three months the periods for complying with certain procedures in opposition proceedings (rr. 41, 42 and 43);

(3) slightly modifying the requirements regarding the filing of documents in opposition proceedings (r. 45);

(4) specifying the formalities to be observed when filing an application for revocation (r. 97 (1) and Form 39);

(5) increasing the Comptroller's discretionary powers to extend certain prescribed time limits (r. 154); and

(6) adding to sch. 1 a new fee item relative to a written request for information as to whether a patent is in force.

Came into operation February 1, 1958. 1958. No. 73.

3. **CUSTOMS AND EXCISE.** The Import Duties (Drawback) (No. 2) Order, 1958.

This order provides for the allowance of drawback of Customs duty paid on certain handbag frames when ladies' handbags incorporating those frames are exported.

Came into operation January 28, 1958. 1958. No. 71.

4. **NATIONAL ASSISTANCE.** The National Assistance (Charges for Accommodation) (Amendment) Regulations, 1958.

These regulations provide for an increase in the amount which local authorities, in assessing the ability of persons to pay for accommodation provided for them under part III of the National Assistance Act, 1948, are to assume such persons need for their personal requirements.

Came into operation January 27, 1958. 1958. No. 42.

5. **POLICE.** *England and Wales.* The Police Pensions Regulations, 1958.

These regulations, which are made under ss. 1 and 3 of the Police Pensions Act, 1948, relate to widows' pensions and children's allowances. Part I amends the Police Pensions Regulations, 1955, which relate to awards made on and after April 25, 1955; part II amends the Police Pensions Regulations, 1949, which relate to awards made between July 1, 1949, and April 25, 1955; and part III amends the Police Pensions Regulations, 1948, which relate to awards made before July 1, 1949.

The principal amendments are described below.

Regulations 2, 4, 7, 8, 13, 14 and 15 increase the amount by which widows' pensions may be increased in those cases in which discretionary increases are permitted.

Regulations 6, 12, 20 and 21 make similar provision in relation to children's allowances.

Regulations 5, 9, 10, 11, 17, 18 and 19 adjust the extent of the abatement of a widow's pension by a national insurance widowed mother's allowance.

Came into operation January 27, 1958. 1958. No. 48.

6. **ANIMALS.** Prevention of Cruelty. The Small Ground Vermin Traps Order, 1958.

Subsection (1) of s. 8 of the Pests Act, 1954, provides that after July 31, 1958, it shall be an offence to use for the purpose of killing or taking animals a spring trap other than one approved by order of the Minister of Agriculture, Fisheries and Food. The subsection does not, however, apply to traps specified by the Minister as being adapted solely for the destruction of rats, mice or other small ground vermin. By this order the Minister so specifies two types of small vermin trap commonly in use.

Came into operation February 1, 1958. 1958. No. 24.

7. **ROYAL NAVY.** The Naval Courts-Martial (Procedure) Order, 1957.

1. This order approves general orders of the Admiralty under s. 58 of the Naval Discipline Act, 1957, superseding the General Orders approved by the Naval Courts-Martial (Procedure) Order, 1953 (S.I. 1953/594) under the Naval Discipline Act, 1866, and re-enacting their provisions with certain amendments. The numbers of the articles, which are not consecutive, are those which will be allocated to them in the new edition, now being prepared, of Chapters 21 and 22 of the Queen's Regulations and Admiralty Instructions. Most of the amendments are consequential on changes brought about by the new statute, but the opportunity has been taken to make certain other minor changes and certain drafting amendments.

2. Some of the changes brought about by the new Act affect the general orders in a number of places; for example, the new provision in s. 54 that all members of the court shall be nominated by the convening authority has led to changes in arts. 2119, 2120, 2124 and 2131. Again, s. 55 of the Act gives a formal status to the clerk of the court, thus enabling certain functions to be performed by him which formerly had to be performed by the Judge advocate; for example, the clerk of the court can now summon witnesses (2124 (3)) and administer oaths to shorthand-writers, interpreters and witnesses (2124 (4)).

3. Some provisions which used to appear in general orders have been dropped, because the power is now given by the statute itself. For example, art. 2138 used to contain authority for the holding of trials in camera, but this now derives from s. 61 (2); art. 2142 used to lay down the procedure to be followed in the event of an objection to the president of the court, which is now to be found in s. 59 (3); art. 2164 used to refer to the Children and Young Persons Act, 1933, but s. 60 (3) of the Act now makes the necessary provision for the receipt of children's evidence. Conversely, whereas s. 63 of the Act laid down the forms of certain oaths at courts-martial, s. 60 of the new Act leaves all the oaths to be prescribed by general orders (art. 2164).

4. The other main changes in the general orders are as follows:

(1) A list of exhibits which the prosecutor proposes to put in evidence is to accompany the circumstantial letter when sent to the convening authority by the prosecutor, to the Judge advocate and the clerk of the

court by the convening authority, and to the accused by the clerk of the court (arts. 2105 (d), 2120, 2124 (1)).

(2) The accused's friend is in future to be a member of the Services or of the legal profession (art. 2109).

(3) The clerk of the court is to pass on to the accused's friend any evidence of the accused's character which the prosecutor intends to produce in the event of a conviction (art. 2124 (1)).

(4) The power of the convening authority to dissolve the court, if it seems to him necessary to do so, has been stated (art. 2131).

(5) The court has been given power to deliberate in private on any matter arising out of the trial and not merely on the finding or sentence; and the Judge advocate may retire with them except when they are considering the finding (arts. 2138 (1) and 2126 (7)).

(6) Provision is made for the proceedings to be recorded by mechanical means, as well as by shorthand. The form of oath for the person employed to record the proceedings also allows for this possibility (arts. 2140 and 2164 (1)).

(7) In navigational cases involving aircraft the Captain is to make available the maps by which the aircraft was navigated, just as he has to produce the charts by which a ship was navigated (art. 2145).

(8) It has been made clear that, should the court be reduced below four the trial must be terminated and the court dissolved (art. 2165).

(9) The evidence of a sick witness unable to appear is now to be taken before the Judge advocate instead of before a magistrate or consul (art. 2167).

(10) The procedure for dealing with contempt of court has been revised in consequence of the changes introduced by s. 38 and 65 of the Act (art. 2169).

(11) It is no longer necessary for general orders to apply the Criminal Evidence Act, 1898, to courts-martial, as s. 6 of that Act, as amended by para. 5 of sch. 2 to the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955, now makes permanent provision for this (art. 2171 of the present orders)

(12) Article 2240 already enables copies of certain official documents to be received as prima facie evidence without formal proof. The new article enables the originals of such documents to be produced in the same way.

(13) Section 58 (3) of the Act provides for general orders to direct that the powers conferred by s. 7 of the Bankers' Books Evidence Act, 1879, may be exercised by the convening authority as well as the court or a Judge. Article 2243 makes the necessary provision.

(14) The president of a court-martial in a navigational case may dispense with the special procedure in art. 2252 for obtaining navigational evidence, if he considers the circumstances so exceptional that it would be a waste of time.

5. The new general orders will come into operation on the date appointed for the commencement of the Naval Discipline Act, 1957.

Coming into operation in accordance with s. 2 of the Act. 1957. No. 2225.

BILLS IN PROGRESS

1. **Compensation (Acquisition and Planning) Bill.** A Bill to amend the law of compensation in cases of compulsory acquisition of land under Act of Parliament and in cases where the value of land is affected by the operation of the Town and Country Planning Acts. [Private Members' Bill.]

2. **Matrimonial Proceedings (Children) Bill.** A Bill to extend the powers of courts to make orders in respect of children in connexion with proceedings between husband and wife and to require arrangements with respect to children to be made to the satisfaction of the court before the making of a decree in such proceedings. [Private Members' Bill.]

3. **Post Office and Telegraph (Money).** A Bill to provide money for expenses of the Post Office properly chargeable to capital account; and for purposes connected therewith.

4. **Parliament Bill.** A Bill to alter the composition of the House of Lords by removing its hereditary basis; to reduce its powers and to increase the powers of the House of Commons; and for purposes connected therewith.

5. **Wages Bill.** A Bill to amend the law relating to the payment of wages. [Private Member's Bill.]

6. **Import Duties Bill.** A Bill to confer new powers to impose duties of customs in place of the powers conferred by the Import Duties Act, 1932, and, in connexion therewith, to repeal the duties of customs chargeable under or by virtue of that Act and of certain other enactments and make general provision for the purpose of customs duties as to Commonwealth preference and as to produce of the sea, and for purposes connected with the matters aforesaid.

NOTICES

The next quarterly meeting of the Lawyers Christian Fellowship will be held at The Law Society's Hall, Bell Yard, W.C.2., on Tuesday, February 18, 1958, at 6.30 *p.m.* Tea will be available from 5.30 p.m. The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Mr. D. F. Ellison-Nash, F.R.C.S., Dean of the Medical College of St. Bartholomew's Hospital, on the subject of "The professional approach to human problems."

CONFERENCES, MEETINGS, ETC.

LOCAL GOVERNMENT LEGAL SOCIETY

The tenth annual meeting of the Local Government Society took place at St. Pancras Town Hall (by courtesy of the mayor and council of the metropolitan borough of St. Pancras) recently. The society were welcomed by the mayor (Councillor Trevor J. Redman, J.P.).

In the morning Mr. J. Gilchrist Smith, LL.D., a member of the society, in the course of an interesting talk on local authority conveyancing, dealt with the form of contracts for the purchase of land, the handing over of ministerial consents to the sale of land as documents of title and the enforceability of restrictive covenants over land acquired by local authorities.

At the luncheon the president of The Law Society (Mr. I. D. Yeaman) proposed the health of the Local Government Society, to which the chairman (Mr. F. Dixon Ward) responded. Mr. R. N. D. Hamilton proposed the toast of the guests and Mr. H. S. Haslam, the secretary of the Urban District Councils Association, replied.

The business meeting took place in the afternoon. Mr. R. N. D. Hamilton (County Hall, Aylesbury), was elected chairman for the ensuing year and Mr. R. H. Morton (Town Hall, Dewsbury) was elected vice-chairman. Mr. J. D. Schooling (Shirehall, Worcester) was re-elected as hon. secretary and Mr. D. E. Almond (Town Clerk's Office, Lincoln) as hon. treasurer. The annual subscription was again fixed at 17*s.* 6*d.* Membership is open to all solicitors employed whole-time in local government service and there are now nearly 450 members.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

The Justices' Clerk. No. 45. January, 1958.

County Borough of Blackburn Police. Chief Constable's Report. 1957.

The Structure of Local Government in England and Wales. W. Eric Jackson. Longmans. Price 24*s.* net.

The Advocate's Devil. C. P. Harvey, Q.C. With a foreword by Lord Monckton. Stevens. Price 12*s.* 6*d.* net.

Annual Estimates of the Population of England and Wales and of Local Authority Areas. H.M.S.O. 1*s.* net.

Wiltshire County Council. Report of the Chief Inspector of Weights and Measures, year ending March 31, 1957.

The Electronic Office. Second edition. R. H. Williams. Gee & Co. (Publishers), Ltd. 17*s.* 6*d.*

Lowestoft Abstract of Accounts for year ended March 31, 1957.

The Future of Legal Aid. Pete Benenson. Fabian Research Series No. 191, 11 Dartmouth Street, S.W.1. Price 3*s.*

The Honorary Magistrate, New Zealand. November, 1957.

Brighton Probation Service Annual Report, 1957.

Bootle County Borough Police. Chief Constable's Report to the Licensing Justices. December 31, 1957.

Minnesota Law Review. December, 1957.

CORRECTION

In new additions to the Worcester County Commission given at p. 24, *ante*, we regret a number of errors were made. First, the name of Mr. Gordon Melville was given and his surname of Anstis omitted. The postal address of Mr. S. T. Pugh is Oldbury, not Birmingham, and Mr. W. D. Yates' address is Cropthorne Court, not Copthorne. Mr. A. E. Such has since changed his address to 48 Albert Road, Evesham.

Mr. C. R. Payne was appointed to the Caernarvon County Commission, as shown, but the remaining four names shown under that of Mr. Payne were in fact added to the Glamorgan County Commission.

REVIEWS

Chalmers' Sale of Goods Act, 1893. By Paul Sieghart assisted by E. J. Prince. London: Butterworth & Co. (Publishers) Ltd. Price 35s. net.

The Sale of Goods Act, 1893, holds a special position among statutes in that it has for more than 60 years stood the test of daily life, with less alteration (probably) than any other major Act. Throughout that period it has covered a large part of the transactions by which men live, in their homes as well as in their business. When the Act was passed it was fundamentally a codification of the common law, and no doubt it can be said that most of the provisions of the Act represent the common sense of generations, and that this is why the public at large relies, unconsciously, upon the law as Chalmers laid it down. The fact that the Act passed so readily into the unrealized background of daily life is also due to the great care devoted to the preparation of the Bill. All this is set out in most interesting fashion, in Chalmers' own introduction to the edition of 1894, which is reproduced in the present edition.

Since 1894 the book has run through several editions, the present being the thirteenth. Twelve years have elapsed since the twelfth edition, and these have been years of some notable changes in the statute law relating to the sale of goods. Of these changes, the most important were brought about by the Law Reform (Enforcement of Contracts) Act, 1954, which rendered obsolete a mass of learning upon the requirement of writing for a contract.

The present edition follows the pattern which Chalmers himself laid down, of printing the sections of the Act in larger type, with illustrations taken from decided cases, and short commentaries comparing English law with Scottish or with continental codes.

The Act is short as statutes go, having only 62 sections, including those which have been since repealed. This means that the book is easy to master, despite the wealth of learning which the learned editor has inherited from earlier editions and brought up to date. In doing this he has not merely given references to new sources of law, but also to the more important articles in the legal periodicals. There have been 80 cases added from the Law Reports since the previous edition, and some older cases have been noticed for the first time. In addition to the Law Reform (Enforcement of Contracts) Act, 1954, there is important new legislation in the Merchandise Marks Act, 1953, while the Exchange Control Act, 1947, although essentially an emergency provision, is still in force and introduces fresh legal problems in international trade. These are, so far as necessary, printed in an appendix where the sections are annotated, and there are cross-references in the main text.

One feature of daily importance to the practising solicitor is the inclusion in an appendix of those portions of the Hire Purchase Act, 1938, as since amended, which relate to sales on credit. A second appendix contains Chalmers' original note on the history of conditions and warranties, which are dealt with in the light of up-to-date authorities in a long note by the present editor to the definition section.

The learned editor rightly emphasizes that the Act of 1893 was a coherent whole, and sections governing particular transactions or dealing with particular topics should be considered in the light of other parts of the Act. This need has been met by additional cross-references, not merely to the definitions properly so-called but to any places in the text where cognate matters are dealt with. There is a valuable list of statutes dealing with the sale of goods in other English speaking countries, and the references to the main continental codes based upon the civil law have been brought up to date.

The different sizes of type have been very carefully thought out, to differentiate the text of the Act from the illustrations and comments, with a small but very clear type used in the footnotes. The appearance of the page is particularly pleasing, partly (it may be) because a better paper has been used than is sometimes found in the less expensive legal publications.

Whether the book is regarded as a students' textbook or as a desk book to be kept at hand and constantly referred to by the practising lawyer, it is equally good, and we are inclined to think the present is the best edition which has yet appeared.

Ageing on the Factory Floor. By. F. le Gros Clark, M.A. Nuffield Foundation, Nuffield Lodge, Regent's Park, London, N.W.1. Limited supply free.

This is a report of a further study by Mr. F. le Gros Clark in the series, "Studies of Ageing within the conditions of modern industry." It relates to men employed in the production of domestic furniture, and like the earlier studies was based on the principle that to reach a full understanding of ageing within industry a number of contrasted occupations and industrial plants must be examined. The records of 251 older men working manually under factory conditions were scrutinized and discussed in detail. It was found that some adjustment or concessions had to be made for about three in 10 of those in their early sixties, for about six in 10 of those in their late sixties, and for practically all the working survivors who were in their seventies. On the reason for granting the concessions those to men in their sixties were thought to be due as commonly to old age as to some chronic ailment or physical impairment. But it was not always easy to apportion the cause of the concessions. There was evidence, however, that allowances were frequently made for men's age alone. The author explains that it is not scientifically safe to generalize about ageing men from one set of working conditions to another. Only after a series of occupational studies would it be possible to venture on any useful comparisons. Mr. le Gros Clarke is peculiarly fitted to undertake inquiries of this kind and it is to be hoped that he will continue to do so.

The Offenders: Society and the Atrocious Crime. By Giles Playfair and Derrick Sington. London: Secker & Warburg, Ltd. 25s.

On the jacket of this book we read that "it tells in absorbing detail the story of six criminal trials . . . it throws fresh light on the vexed question of capital punishment . . . it poses, directly and by implication, the whole question of the relationship between the individual and society." Such a book would indeed be of value, but, alas, we do not find it here. The "absorbing detail" of the trials in question turns out to be a brief recapitulation of the more lurid passages in the court proceedings, interrupted constantly by tendentious comment from the authors, who are clearly desperately anxious for us not to miss what they conceive to be the real issues. As for the "fresh light" on capital punishment, it is simply the authors' opinion that it is not desirable to execute murderers—an opinion expressed in sentences like these: "Heath's case typifies the treatment of the aggressive psychopathic murderer, not only in England, but in any country where homicide is punishable by death. We believe that . . . he was unfairly tried and unfairly convicted."

The purpose of the book appears to be to plead for lenient treatment for those described in current fashionable jargon as "psychopaths." It is a central weakness in the authors' thesis that no satisfactory definition of this term exists. Indeed, so numerous are the books and articles which cry for generosity for this mysterious class of persons that one is entitled to say that "psychopath" is coming to hold a purely emotional tone strangely parallel to the sentiment which the writers of these polemics specifically denounce.

A book on psychiatry, criminology, or penology—and this is a mixture of the three—should at least be objective, unsensational and well documented. But these authors are continually making extravagant denunciations as though they were self-evident propositions, when, in reality, they call for most thorough proof if they are to be maintained with any seriousness.

We are given this remarkable statement: "An almost foolproof technique has been developed in both Britain and America for the legal extermination of psychopathic murderers. It is the technique dependent upon the co-operation of forensic psychiatry and the law; it is born of ignorance and prejudice; it reflects the public desire for vengeance on the so-called 'monsters' and 'mad dogs'." The reader of this diatribe should pause to reflect: the criminal law of this country has been evolved through centuries; it has been endlessly modified through trial and error, and through changing social pressures. Its administration is intimately in the hands of ordinary people (not unlike the authors of this book) who serve on juries for no reward. The juries are patiently guided by a most complex system of checks and balances, in which the defence has if anything a stronger pull than the prosecution, for any doubt must resolve an issue in favour of the accused. At the pinnacle of the structure are Her Majesty's Judges, the most honoured and the most independent judiciary in the free world. Yet here are two writers who speak of this system of open trial by jury, with full rights of appeal, in the terms just quoted.

One further quotation may suffice to make the author's own comment on their work as complete as it deserves to be. We are told, with reference to Irma Grese of the S.S., the wardress

of Belsen, that her execution was "a vile deed, a deed with its own special brand of wickedness, its own particular aura of evil." Such advocacy is a positive hindrance in a cause which some cherish as a high aim to be pursued with objective devotion, the cause of penal reform as an aspect of enlightened social advancement.

Notes on District Registry Practice and Procedure. By Thomas S. Humphreys. London: The Solicitors' Law Stationery Society, Ltd. Price 13s. 6d. net.

This is a small practical handbook, which will be especially useful to solicitors and managing clerks concerned with litigation. It will also be useful in the offices of the larger local authorities, at any rate. The present is the tenth edition, which is an indication that it has been found to serve its purposes. The various costs and charges payable in district registers, both for straightforward cases, and for such cases as where there is service out of the jurisdiction, are plainly set out. There are also notes upon some of the peculiarities of a writ of summons and entry of appearance, where there are differences between the practice of the different Divisions. It is, in short, a compendium of the sort of things a solicitor and his managing clerk must bear in mind.

Personal Identity. By C. H. Rolph. London: Michael Joseph, 26 Bloomsbury Street, W.C.1. Price 15s.

The author, better known to many readers and listeners as C. R. Hewitt, says of his book that it is "about the perils and benefits of personal identity, and the ways in which they can be respectively avoided and enjoyed." Thus, he discusses and criticizes the methods by which people, and especially suspects, are identified and the way in which some individuals personate others. Identification parades seem to lose most of their value under the fire of his criticism. There is much to be said for the suggestion, which was made to a Royal Commission, that there should be a blank parade in which the suspect was not put up, as well as the parade in which the suspect was present. This would go some way towards meeting the objection that most witnesses, believing the offender to be present, pick out the man whom they consider to resemble him.

There is a good deal in the book about fingerprint identification, and how far it may be considered a violation of a man's personal rights to take the fingerprints of an unconvicted person. On this point, Scottish Judges, quoted by Mr. Rolph, have made valuable pronouncements. Our own view is that there is no need to be too ready to protest in the name of liberty against such measures as the taking of fingerprints or national registration, both of which can be of considerable use to innocent people in various circumstances.

Readers with long memories will find peculiar interest in the cases of Adolph Beck and Oscar Slater, both of which were grievous miscarriages of justice, but had at least their use in that they led to a reform of the law by the establishment of Courts of Criminal Appeal. Yet another case of mistaken identity is the case of Emery, Thompson and Powers, which is fresh in the memory of most readers.

Going further back in legal history Mr. Rolph recounts the famous Druce Portland Case, and the Tichborne Case. It is interesting to find that after a careful analysis of the last named case he comes to the belief that the claimant was indeed the missing Roger Tichborne and that his conviction and heavy sentence were quite unjustified.

What are possibly slight digressions from the main subject, but none the less interesting, are the chapters in which Mr. Rolph deals with schizophrenia, with special reference to the Giffard case, his views on the use of the "pardon" in respect of those proved innocent, and the need for a more generous attitude in relation to the grant of compensation to the victims of crime.

Mr. Rolph has produced a remarkable book, obviously the result of wide reading and much thought. He has the advantages of practical experience as a police officer of high rank and of considerable legal knowledge. To this he adds literary style, with the result that he has given us a book which we have read with great enjoyment and which has at the same time stimulated thought.

The Law of Married Women. By M. Turner-Samuels, Q.C., M.P., Recorder of Halifax. The Thames Bank Publishing Company, Ltd., Henley Hall, Ipswich, Suffolk. Price £4 4s., by post 2s. 6d. extra.

The late Mr. Turner-Samuels completed this book in 1954, as is shown in the preface, and it does not appear that it was brought up to date before publication this year.

The author's object was "to bring together, in one volume, aspects and sections of the law relating to married women, which are, ordinarily, only to be found dispersed in divers legal text books, and then, so scattered as to make reference difficult and completeness impracticable." This object he has achieved, and the plan of the book was well thought out. The book is divided into three parts. Part I is headed "Mutual Rights and Duties of Husband and Wife" and deals with consortium, maintenance, contracts, dispositions and gifts, proceedings by husband or wife against each other, the evidence of spouses and separation agreements. Part II is headed "Rights and Liabilities of a Married Woman Independently of Her Husband," and deals with a married woman's capacity as regards property, income and contract, her liability for torts, her income tax and the application to her of the Bankruptcy Acts. Part III deals with general and miscellaneous matters, including failure of a husband to make suitable provision by will, nationality and domicil, legitimation and guardianship.

The question of a wife's right to maintenance at common law and its effect upon statutory provisions in the Summary Jurisdiction (Separation and Maintenance) Acts sometimes presents difficult problems. The subject is adequately dealt with in the light of the various decided cases, such as *Tulip* v. *Tulip* [1951] 2 All E.R. 91. There is also a useful statement of the law regarding the evidence of husband and wife for and against each other in both civil and criminal cases. What constitutes residing together by husband and wife is another point of interest to magistrates' courts, and this is carefully explained by reference to the decisions of the superior courts.

We have, however, found one or two statements about which we venture to differ from the learned author. At pp. 456–7 it is stated, "A man marrying a woman who has children whether legitimate or illegitimate, renders himself liable for their support. The child is in fact deemed to be part of the husband's family." There is a footnote referring to s. 42 of the National Assistance Act, 1948, but that section does not bear out the statement and indeed it relieved the husband from his former liability in this respect under the Poor Law.

Ryde's Rating Cases. Volume I. By Michael E. Rowe, Harold B. Williams and David Widdicombe. London: Butterworth & Co. (Publishers) Ltd.

This well produced volume of 400 pages contains all the cases reported in the paper backed issues of *Ryde's Rating Cases*, together with several which have not been previously made available in this series. The new cases comprise half a dozen decided by the Lands Tribunal; another half dozen decided by quarter sessions, and three from the High Court or the House of Lords. Rating law is this year going through an unhappy phase of constant litigation, and important points are being argued in *fora* whose decisions do not come into the ordinary law reports. This volume is thus well worth obtaining, by those who do not, as subscribers to the earlier issues, receive it by way of replacement.

False Witness. By Michael Underwood. London: Hammond, Hammond & Co., Ltd. Price 10s. 6d. net.

This is a novel written by a member of the bar which is part of the "Cloak and Dagger" series—which fully explains its type. There is robbery, murder (twice) most foul, and bearing in mind its authorship, not unnaturally the book has a legal background. The setting for the action of the novel is a small Assize town. and many of the court officials appear to be involved in the various "goings-on." The book holds one's interest to the last, and there is a most surprising ending. For devotees of detective fiction, one need ask for no more.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, January 30

LIFE PEERAGES BILL—read 3a.
TRUSTEE SAVINGS BANK BILL—read 3a.
RECREATIONAL CHARITIES BILL—read 3a.

HOUSE OF COMMONS

Tuesday, January 28

PARLIAMENT BILLS—read 1a.
POST OFFICE AND TELEGRAPH (MONEY) BILL—read 3a.
ENTERTAINMENTS DUTY BILL—read 2a.

Friday, January 31

LITTER BILL—read 2a.

SOUND AND FURY

The searchlight of criticism has recently been directed upon two professions which have much in common—journalism and politics. We must beware of generalizing from incomplete data, but not even the apologists of these professions have sought to maintain that all is well within them. Correspondence in *The Times* has given instances of offensive practices on the part of some news-editors and reporters—their intrusions into private griefs, their delight in sensationalism and near-pornography, their vulgarity and disregard of human dignity, their ignorance of (and consequent contempt for) things of the mind, their distortions of fact in the supposed interests of news-value and circulation. Others have attacked the shortcomings of certain politicians—their obsession with trivialities, their pusillanimity, their pompousness, their delight in listening to the sound of their own voices, their narrow concentration upon points of order, procedure and privilege, their general incompetence at getting real things done.

It is not for us to uphold or to repudiate these strictures, but to attempt to analyze the possible influences behind these tendencies. What these two professions have in common is their dependence upon publicity; and therein lies both their strength and their weakness. The writer or speaker who counts his readers or his audience in millions is particularly likely to become (as Disraeli said of Gladstone) "inebriated with the exuberance of his own verbosity"; great numbers give him an overwhelming sense of privilege and power, which in turn provide a tremendous fillip to his self-confidence and self-esteem. Unfortunately, to quote the well-known aphorism of Lord Acton, "all power tends to corrupt; absolute power corrupts absolutely." This is a saying the truth of which has been amply demonstrated by history. All forms of social organization have had their advocates and apologists—theocracy, oligarchy, monarchy, democracy—even anarchy; there is no monopoly of light and truth in any of them. But the pages of history offer no single example of a human being who, having attained power, has not tended to abuse it, however successfully he may have convinced himself, or become persuaded by the adulation of his followers, that he wields his power in the best interests of the community at large.

This is a *malaise* to which the pressman and the politician are especially prone. The physician, the surgeon, the lawyer and the architect work for the most part quietly, in private: success comes to them, if at all, from the personal recommendations of satisfied patients and clients. But there is something histrionic about the pursuit of journalism and politics; their devotees tend to displays of exhibitionism; they must be everlastingly on the look-out for applause—if not always from the gallery, then at any rate from the dress-circle and the stalls. They are apt to lose their sense of humour—or, at least, the faculty of smiling a little at their own foibles. Trivialities and banalities become (in their eyes) matters of earth-shaking importance; a third-rate article, or a pedestrian speech, is puffed-up in their minds, by the magic of the numbers to whom it is addressed, to the level of a literary masterpiece or a gem of sublime eloquence. That way lies megalomania, and there are recent melancholy examples in both professions.

Another similarity between them is the premium both are apt to place upon emotional factors, and their denigration of reason and intellect. "Damn your principles! Stick to your party!" remarked Disraeli to Bulwer Lytton. "Politics," said Robert Louis Stevenson, "is perhaps the only profession for which no preparation is thought necessary." He might have said the same of journalism. A passionately held conviction upon the importance of stresses and strains, or of the law of inverse squares, will not make a man an architect or a physicist, in the absence of some knowledge of elementary principles; to hold strong views about impressionism, or the twelve-tone scale, will not equip him as a critic of art or music, without a long and disciplined study of either subject. But a complete and abysmal ignorance of history, economics, sociology and administration does not, under our system, deter any man from entering the profession of politics—provided only that he is an enthusiastic imperialist, socialist, pacifist or what-you-will, and has the faculty of being able to talk his listeners into a similar state of enthusiasm by the neat employment of half-a-dozen rhetorical tricks. In the same way, violent prejudices on the subject of capital punishment, homosexuality or the upbringing of children, together with the merely meretricious ability to make a good "story," are deemed, in certain circles, a sufficient qualification for the journalist's profession, even though the aspirant may lack all theoretical and practical aquaintance with any of these subjects, ignore all reasoned argument on the one side or the other, and close his eyes to the human implications and the social problems connected therewith. Matter is nothing; manner of presentation is all-important.

Finally, it must be admitted that, with notable exceptions, neither the politician nor the pressman is a practical exponent of those excellent moral precepts "Do as you would be done by" and "Be done by as you did." The one does not always hesitate, under the protection of parliamentary privilege, to launch attacks on individuals and organizations which run counter to his partiality or outrage his prejudices; yet any reply in kind, or even reasoned criticism of his methods, is stigmatized as an assault on democratic institutions. In the same way some pressmen, sheltered by the enormous financial resources of their newspapers and by the *locus poenitentiae* afforded by the Defamation Act, 1952, arrogate to themselves a kind of incontestable right to intrude where they are not wanted, to unearth old scandals which it would be more hygienic to leave undisturbed, to distort facts for the sake of an attractive presentation; and then to accuse those who expose and protest against such practices of aggression upon the freedom of the press. The problem is by no means new; some of the members of both professions might do well to ponder the words of John Milton—himself a controversialist of passionate conviction but also a profound thinker, a prodigious scholar, and a master not only of his medium but also of his subject:—

> "Licence they mean when they cry Liberty;
> For who loves that must first be wise and good."

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Contract—*Loan on deposit receipt—Stamp duty.*

Section 8 of the Finance Act, 1899, deals with the issue of loan capital. The important subsection is (5), which defines loan capital to exclude loans raised for temporary purposes for periods not exceeding 12 months. Local authorities freely borrow, by way of temporary loan, moneys which may be repaid at seven days' notice given by either side. In particular cases these temporary borrowings may continue for more than 12 months though, quite often, during the currency of a loan the rate of interest may be altered by mutual agreement evidenced by correspondence. Receipts for such temporary loans, incorporating an undertaking to complete and seal a mortgage deed if called upon to do so or alternatively immediately to repay the loan, are given under hand and attract stamp duty of only 6*d.* whatever the amount of the loan. Authorities naturally desire to avoid payment of *ad valorem* stamp duty which, since temporary borrowings will ultimately be funded by the issue of stock or mortgages, would have to be paid twice over if paid on the original deposit receipt.

I should like your opinion on the following points:

1. To avoid stamp duty is it necessary that the original receipt should contain a stipulation that the loan should not in any case be for a longer period than 364 days?

2. If it is desired to renew such a loan whilst avoiding *ad valorem* stamp duty (*a*) is it necessary that it should be repaid to and reborrowed from the lender, and if so should any interval —say one day—elapse between repayment and reborrowing; or (*b*) would it suffice if the original receipt were recalled and another in similar terms issued?

3. If during the currency of a temporary loan the rate of interest is varied, does this constitute a fresh borrowing if, the loan not being physically repaid and then reborrowed, (*a*) the original receipt is recalled, a fresh receipt incorporating the new terms being issued; or (*b*) the original receipt remains with the lender the new terms being merely evidenced in correspondence?

BANUR.

Answer.

It is at first sight a little strange to call this form of borrowing an "issue of loan capital," but we have no doubt that it must be so regarded for the purpose of s. 8 of the Finance Act. 1899, seeing that Parliament thought it necessary in subs. (5) to exclude from the provisions of that section a number of similar types of borrowing. Turning to the specific questions:

1. This is in our opinion at least a desirable precaution.

2. (*a*) We do not think it necessary that money should pass or cheques be exchanged, or that there should be an interval of time, provided the two borrowings are distinct.

(*b*) We think this is enough.

3. In our opinion an agreement to lend money for a maximum period at a specified rate of interest forms a complete transaction in itself, different from the ordinary bank overdraft where the agreement is for a rate of interest varying with bank rate. It would be possible to frame an agreement between a local authority as borrower and a private lender, for a year (unless either party wished repayment to take place earlier) at a rate of interest varying from time to time within the year according to bank rate or other external cause, but we should expect such an agreement to be less attractive to lenders than an agreement at a fixed rate of interest, and for the purposes of this answer we are assuming a fixed rate of interest. This being so, we think (*a*) is the proper method. As between the borrower and the lender, letters evidencing a new agreement might be effective if legal proceedings took place. We do not, however, regard them as being satisfactory. For the purpose (in particular) of determining the stamp duty, we prefer a surrender of the old receipt and issue of a new receipt naming the new terms.

2.—Criminal Law—*Army Act,* 1955, *s.* 146—*Enforcement of fine imposed before joining Army.*

What steps can be taken to enforce payment of a fine and costs imposed on a defendant if, before paying this, he enlists in the Army?

Before the passing of the Army Act, 1955, it was accepted that the provisions of s. 138 (7) of the Army Act, 1881, were wide enough to include the recovery of fines imposed before the soldier enlisted. (*See* Home Office circular 327522/16, dated February 20, 1940.)

Section 146 of the 1955 Act, however, which replaces s. 138 (7), appears to apply only where the fine is imposed after enlistment; at least that is the view taken by a number of commanding officers with whom I have had communication.

It would appear that if the defendant who has been ordered to pay a substantial fine decides to join the Army for 21 years and refuses to pay the fine nothing can be done to enforce payment.

FOLVAS.

Answer.

We agree with our correspondent that s. 146 of the Act is not as wide as s. 138 (7) of the Act of 1881 and that a fine cannot be enforced by deductions from the defendant's pay. It seems to follow that the defendant who has not paid such a fine is amenable to the ordinary process of enforcement and can be summoned or brought before the court for inquiry to be made as to his means.

3.—Game — *Sale by auction — Whether seller and auctioneer should be licensed as dealers.*

A person named X brings game (dead) into this area to a cattle market for handing to the auctioneers, Y, for sale. Is it considered that X should have a licence to deal in game issued by the local authority for the district in which the market is situate, and whether the auctioneers, Y, require a licence?

EVENO.

Answer.

If X has a game licence under the Game Licenses Act, 1860, (which must be distinguished from a game dealer's licence), he may sell game anywhere to any licensed game dealer. The sales at auction in these circumstances would be lawful, provided that only licensed game dealers were allowed to buy. Y would not need a licence because he would only be the agent through whom X sold.

If X had a game dealer's licence he could sell only at his house, shop or stall, with a board bearing his name and the words "licensed to deal in game." It seems unlikely, therefore, that a sale at auction could be lawful and, in that event, Y would be aiding and abetting X in an unlawful sale.

4.—Housing Act, 1957—*Clearance area—Houses already subject to closing order or undertaking.*

Under s. 11 (3) of the Housing Act, 1936 (s. 16 (4) of the Act of 1957) a local authority instead of making a demolition order may accept an undertaking that the dwelling shall not be used for human habitation until it has been rendered fit for that purpose to the satisfaction of the authority. Under s. 10 (1) of the Local Government (Miscellaneous Provisions) Act, 1953 (s. 17 (1) of the Act of 1957) a local authority may, instead of making a demolition order or accepting an undertaking as mentioned above, make a closing order prohibiting use of the house other than for a purpose approved by them.

The authority's action in both the above cases follows the receipt and consideration of official representations. If therefore it is proposed to define a clearance area and include therein property adjacent to the subject of either an undertaking or a closing order, it seems to me that merely for the convenience of redevelopment proposals, however desirable such a course may be, it is not open to the authority to include within the proposed clearance area the subject matter of the undertaking or closing order. I take this view on the grounds that the action already followed by the authority was pursuant to their consideration of official representations, and that there cannot be a second set of such representations in respect of the same property, as must be the case if the subject matter of the undertaking or closing order is included within a proposed clearance area.

PASAR.

Answer.

We do not think the existence of a closing order or an undertaking under part II of the Housing Act, 1936 (as re-enacted) precludes further official representations in respect of the same houses for the different purpose of s. 42 of the Act of 1957 relating to clearance areas (re-enacting s. 25 in part III of the Act of 1956).

If the houses are no longer unfit they can only be included in the representation and in the area on the grounds of bad arrangement, narrowness of streets, etc., and they will be protected against a clearance order by para. 2 of sch. 5, as also if wholly used for other purposes.

5.—Land—*Compulsory purchase—Severance—Claim for value of potential development.*

A client of ours has acquired, by separate purchases, several parcels of land of which a number are occupied by buildings originally constructed as dwelling-houses. Some of the buildings are still used as dwellings; others are used as business premises; and others are vacant. None of the properties are occupied by our client. The whole form a site which, if cleared, is capable of comprehensive development, *e.g.*, as a bus station. It is zoned in the draft development plan (not yet approved by the Minister) as part of an area for shopping use. No relevant objection was made at the inquiry into the draft plan, and there is no subsisting planning permission for change of use, or certificate under s. 33 of the Town and Country Planning Act, 1954, in force. The area is not and does not include a "claim holding" within the meaning of the Town and Country Planning Act, 1954.

It is anticipated the local authority may seek to exercise their powers under the Housing Act, 1957, with a view to acquiring the properties, or some of them. It is unlikely that an order under part II of the Act could be made, but a clearance or re-development area might be declared under part III.

With reference to s. 59 of the Act of 1957, the buildings occupied as dwellings are fit for human habitation, and s. 59 (2) needs to be considered in the light of that fact.

Two questions have arisen:

(*a*) If the local authority seek to acquire part of the area, can compensation be claimed for severance or injurious affection? Attention is directed to *Palmer and Harvey Ltd.* v. *Ipswich Corporation* (1953) 4 P. & C.R. 5, decided on s. 40 of the Housing Act, 1936, before the Town & Country Planning Act, 1954.

(*b*) If the whole area owned by our client is acquired, can regard be had in fixing compensation to the enhanced value of the whole, when cleared, as a site for such re-development as has been mentioned above?

DEGER.

Answer.

We should answer "yes" to both questions, although with less certainty than we could wish. The case cited was before the Lands Tribunal, and there is a comparative dearth of modern judicial guidance.

6.—Licensing—*Registered club—Rule for admission of temporary members—Sufficiency.*

A registered members' club in this town proposes an amendment to its rules with effect from January 1, 1958, to include the following:

Rule 9. "Members may introduce a visitor to the club premises, but a person residing within seven miles of the club premises shall not be introduced as a visitor more often than once in any period of three months. A person residing more than seven miles from the club premises and who is temporarily living in the town may be introduced by a member and be made a temporary member for a period not exceeding one month on payment of the sum of 1*s*. Members who introduce visitors or temporary members shall be responsible for the conduct in the club of persons so introduced. Each visitor and temporary member shall sign the visitors' book and the member introducing him shall also sign it. Visitors are not allowed to purchase or pay for any excisable goods in the club. When arrangements are made for official parties or teams from other clubs to visit the club premises, the person in charge of the visiting party shall be requested to supply, at or before the time of arrival, a list of the names of the persons making up the visiting party. Such list shall be kept in the club while the party is on the premises and persons whose names are on such list be regarded as temporary members of the club for the duration of such official visit only, for the purpose of obtaining excisable goods in the club."

I should appreciate your opinion as to whether you consider temporary members elected in the circumstances mentioned and without the accepted period of 48 hours' nomination is in order, please.

ONEWO.

Answer.

The Licensing Act, 1953, allows to a club the widest scope in making its own rules, requiring merely that the rules relating to matters specified in paras. (i) to (vi) of s. 143 (2) of the Act shall be mentioned in the return signed by the secretary which must be furnished as a requirement of registration.

Among the matters so specified is the rules of the club relating to "the election of members and the admission of temporary and honorary members and of guests." The rule mentioned by our correspondent seems to answer these requirements and, as a matter of law, it is sufficient.

It makes no provision for any interval occurring between the nomination and the admission of temporary members and, in our opinion, it is not a provision of the law that there shall be such provision in the rule; but if in fact persons are habitually admitted as members, temporary or other, without an interval of at least 48 hours between nomination and admission there is ground for complaint on which a magistrates' court, at its discretion, may order that the club shall be struck off the register: *see* Licensing Act, 1953, s. 114 (1) (*g*).

7.—Local Government Act, 1933, s. 76—*Indirect interest—Trade union secretary.*

A member of the council is the paid branch secretary of the trade union of which many of the council's manual workers are members. Will you advise whether the councillor should declare an interest under s. 76 and abstain from discussing and voting when matters of discipline, rates of pay, conditions of service, etc., of:

(*a*) employees who are members of his trade union are under consideration, and

(*b*) employees who are either non-unionists or members of a rival trade union are under consideration.

CELPA.

Answer.

(*a*) Yes, in our opinion. Subs. (2) defining indirect pecuniary interest is not exhaustive.

(*b*) We think this is too remote.

8.—Road Traffic Acts—*Driving without due care—Circumstantial evidence only—No witness of the incident—Possibility of conviction?*

I refer to the case of *Edwards* v. *Clarke* (1950) referred to in 115 J.P.N. 426 and referred to in *Henderson* v. *Jones* (1955) 119 J.P.N. 304. I conclude from these reports that if the manner of driving was not seen by a witness, then a charge of careless driving cannot be proved even though there is clear circumstantial evidence that the vehicle (for example) mounted a footpath and caused damage to property. Am I correct in my conclusion? If not, please clarify the position.

J. SILVER.

Answer.

The Lord Chief Justice in *Henderson* v. *Jones, supra,* said of *Edwards* v. *Clarke,* "it was a case depending on its own very special facts," etc., and from the way in which he there refers to the latter case (which he says "has rightly never been reported") one can draw the conclusion that the High Court did not consider that importance should be attached to *Edwards* v. *Clarke.* Having regard to what is said in *Henderson* v. *Jones* we think that if justices were to convict on circumstantial evidence leading, *prima facie,* to a conclusion that a car had been driven without due care and attention combined with evidence that the defendant was driving at the time and that he had offered no explanation of what had happened or had said that the explanation was that he had fallen asleep, the High Court would be unlikely to upset the conviction.

9.—Town and Country Planning—*Permission granted—Adjacent property suffers detriment.*

X owns a hotel on two sides of which are private houses, and at the back of which for several years has been a small factory. All these buildings are close to each other, and could be described as semi-detached. The factory owners have recently purchased the private houses on each side of our client's property with a view to extending their factory, using part for production and part for administration purposes, for which planning permission has been granted.

X wrote a letter to the planning authority as soon as he heard of the possibility of an application for planning permission, and was informed by the planning authority that his letter would be considered when the application was heard. He subsequently heard that planning permission had been granted, although his letter was taken into consideration before the application was determined. It seems to us that X has no redress to the planning authority in connexion with this application, and we shall be glad to have your confirmation of our opinion.

CINEN.

Answer.

We agree. It is a complaint sometimes made about planning legislation, that the developer is safeguarded by right of appeal, while persons who may be affected by his development cannot appeal.